

Before the
Federal Communications Commission
Washington, D.C. 20554

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| In the Matter of |) | |
| |) | |
| Developing a Unified Intercarrier |) | CC Docket No. 01-92 |
| Compensation Regime |) | |
| |) | |

COMMENTS OF THE NEBRASKA PUBLIC SERVICE COMMISSION

I. Introduction

The Nebraska Public Service Commission (NPSC) hereby submits these comments in response to the Commission's Further Notice of Proposed Rulemaking (FNPRM) adopted on February 10, 2005 and released on March 3, 2005.¹ The NPSC appreciates the opportunity to comment on the questions posed by the Commission in this proceeding. The NPSC agrees with the Commission's finding in the FNPRM that the intercarrier compensation regime is in need of significant change. The Commission has undertaken a very complex task in its endeavor to overhaul the current system. This proceeding implicates a variety of secondary issues such as competition, regulatory classification, universal service, and network functioning. The NPSC recognizes the Commission must take careful steps to reform the current system, while at the same time, must look at the big picture so as to ensure fair treatment and uniformity. In consideration of this, the NPSC offers its comments in

¹ *In the Matter of Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, CC Docket No. 01-92 (rel. March 3, 2005) ("FNPRM").

support of several ideas and principles which the Commission indicated in its FNPRM that it was considering.

II. Proposals and Principles

The NPSC agrees with the Commission that any mechanism adopted should be economically efficient, preserve universal service, and be competitively and technologically neutral. The NPSC believes the NARUC principles² are in sync with the Commission's goals. The NARUC principles are generally as follows:

II. APPLICABILITY:

A. An integrated intercarrier compensation plan should encompass rates for interconnecting CLEC and ILEC local traffic as well as access charges paid by interexchange carriers.

B. CLECs, IXC's, ISPs, VoIP, wireless, and any other companies exchanging traffic over the Public Switched Telecommunications Network should be covered ("Covered Entities").

C. No Covered Entity should be entitled to purchase a service or function at local rates as a substitute for paying intercarrier compensation.

III. ECONOMICALLY SOUND:

A. The compensation plan should minimize arbitrage opportunities and be resistant to gaming.

B. Intercarrier compensation should be designed to recover an appropriate portion of the requested carrier's 3 applicable network costs. At a minimum, this will require compliance with the jurisdictional separations and cost allocation rules, applicable case law in effect at any point in time, and 47 U.S.C. §254(k).

² The National Association of Regulatory Utility Commissioners (NARUC) Task Force on Intercarrier Compensation (TFIC) developed these principles which were released on May 5, 2004. NARUC adopted these principles by Resolution on February 16, 2005.

C. A carrier that provides a particular service or function should charge the same amount to all Covered Entities to whom the service or function is being provided. Charges should not discriminate among carriers based on:

1. the classification of the requesting carrier;
2. the classification of the requesting carrier's customers;
3. the location of the requesting carrier's customer;
4. the geographic location of any of the end-users who are parties to the communication; or,
5. the architecture or protocols of the requested carrier's network or equipment.

D. Inter-carrier compensation charges should be competitively and technologically neutral and reflect underlying economic cost.

E. The inter-carrier compensation system should encourage competition by ensuring that requested carriers have an economic incentive to interconnect, to carry the traffic, and to provide high-quality service to requesting carriers. In limited circumstances, carriers may voluntarily enter into a bill and keep arrangement.

F. Volume of use should be considered when setting inter-carrier compensation rates. Available capacity may be used as a surrogate for volume of use.

G. Any inter-carrier compensation system should be simple and inexpensive to administer.

IV. COMPETITIVE INTERCARRIER MARKETS NOT PRICE-REGULATED:

Market-based rates should be used where the market is determined to be competitive. A rigorous definition of "competitive market" is needed in order to prevent abuses.

V. NON-COMPETITIVE INTERCARRIER MARKETS PRICE-REGULATED:

A. An inter-carrier compensation system should ensure that telecommunications providers have an opportunity to earn a reasonable return and that they maintain high-quality service. It should also encourage innovation and promote development of competitive markets.

B. Government should limit the ability of carriers with market power to impose excessive charges.

C. Where charges are restricted by government action, carriers have the protections of due process, and confiscation is not permitted.

D. If any ILEC property or operations in the future could give rise to a confiscation claim, in a rate case or otherwise, then a

practical way should be defined to exclude property and operations that are in competitive markets.

VI. APPROPRIATE FEDERALISM:

A. The reciprocal compensation system should ensure that revenues, cost assignment, and the risk of confiscation are jurisdictionally consistent for all classes of traffic.

B. State commissions should continue to have a significant role in establishing rates and protecting and communicating with consumers.

C. To avoid creating harmful economic incentives to de-average toll rates by some interexchange carriers, the FCC should have the authority to pool costs within its defined jurisdiction whenever intercarrier compensation rates are high in some areas.

D. State commissions should retain a role in this process reflecting their unique insights, as well as substantial discretion in developing retail rates for services provided by providers of last resort, whether a dual or unified compensation solution is adopted.

E. A proposal preserving a significant State role that fits within the confines of existing law is preferable.

VII. UNIVERSAL SERVICE AND CONSUMER PROTECTION:

A. The transition to a new intercarrier compensation system should ensure continuity of existing services and prevent significant rate shock to end-users. Penetration rates for basic service should not be jeopardized.

Markets that have been competitive can become non-competitive, requiring the re-imposition of regulation to protect consumers.

B. A new intercarrier compensation system should recognize that areas served by some rural local exchange carriers are significantly more difficult to serve and have much higher costs than other areas.

C. Rural customers should continue to have rates comparable to those paid by urban customers. End-user basic local exchange rates should not be increased above just, reasonable, and affordable levels.

D. Any intercarrier compensation plan should be designed to minimize the cost impact on both federal and State universal service support programs.

VIII. ACHIEVABILITY AND DURABILITY:

A new intercarrier compensation system should not only recognize existing circumstances but should also anticipate changes at least over the intermediate term, and should provide solutions that are appropriately resilient in the face of change.

IX. PREREQUISITES FOR PLAN IMPLEMENTATION:

A. The estimated cost impact on a carrier-by-carrier basis, by State, must be computed before a decision is made whether to adopt a new intercarrier compensation plan.

B. The FCC should identify, quantify, and evaluate the total of all federal high cost universal service fund payments received by each company today. The federal universal service support mechanisms should be revisited as an intercarrier compensation plan is implemented to ensure that telecommunications services remain accessible and affordable to all Americans.

C. The FCC should be required to regularly revisit its cost allocation rules for regulated/nonregulated services. Costs that should not be recovered through regulated rates ought to be excluded from the computation of intercarrier compensation rates.

D. Before any new intercarrier compensation plan is implemented, the effect of the plan on local exchange rates, including both interstate and intrastate SLCs, should be computed.

E. Even when a referral to a Joint Board is not mandated by law, in order to ensure State input the FCC should make a referral, and the Joint Board should act on that referral, in an expedited manner. Similarly, referrals to Joint Conferences should be handled on an expedited basis.

A. The Compensation Plan should be Economically Sound and Efficient

1. Covered Entities: Both NARUC and the Rural Alliance Group have emphasized that in order to be economically sound, the mechanism must include a broad base of contributors. Competitive Local Exchange Carriers (CLECs), Interexchange Carriers (IXCs), Internet Service Providers (ISPs), Voice Over the Internet Providers (VoIP), wireless carriers and any other company exchanging traffic over the Public Switched Telecommunications

Network must be covered. To exclude certain entities would produce an unfair result and create arbitrage opportunities. The plan should be aimed at minimizing arbitrage and gaming opportunities.

2. Cost Recovery: The plan should be designed to allow carriers to recover an appropriate portion of the carrier's applicable network costs. An appropriate plan would ensure that telecommunications providers have an opportunity to earn a reasonable return and that they maintain a high-quality of service. In accordance with the principles adopted by NARUC, any new intercarrier compensation system should recognize that rural areas are significantly more difficult to serve and inherently result in much higher costs to serve than other areas. The adopted mechanism should encourage telecommunications providers to invest in networks capable of deploying broadband services.

3. Charges: The NPSC agrees with NARUC that market-based intercarrier compensation rates should be developed in competitive markets. Price-regulated rates based on reasonable return should be established in non-competitive markets. Rates should be reasonably calculated to give local exchange carriers an opportunity to recover their network costs. Until an appropriate capacity based regime evolves usage should be considered when setting intercarrier compensation rates.

Further, the established rates should not discriminate among carriers based on carrier classification, the classification of requesting carrier's customers, the location of the requesting carrier's customer, the geographic

location of any of the end-users who are parties to the communication, or the architecture or protocols of the requested carrier's network or equipment. Carriers should be allowed to voluntarily enter into bill and keep arrangements, but bill and keep should not be mandated. The FCC and state commissions should work together to limit the ability of carriers with market power to impose excessive charges. State commissions should have the ability to retain their current jurisdiction to set intrastate access rates and to ensure that local rates are affordable and reasonably comparable within their borders.

B. The Compensation Plan should be competitively and technologically neutral and reflect the underlying economic cost

Most plans purport to be competitively and technologically neutral. However, in order for the plan to be technologically and competitively neutral, the unified regime should be constructed to convey equal benefits and burdens on all segments and all technologies. A neutral plan must not carve out or favor any technology over another. A neutral plan must take into account underlying costs of the network and disparities in economies of scale. For example, while a bill and keep plan may appear to be competitively neutral for the larger LECs it does not take into account many of the economic realities of rural carriers providing service in insular areas.

B. The Mechanism should be simple and inexpensive to administer

The Commission should take this opportunity to reform this mechanism so that it is simple to understand, is based on true cost driving factors and is inexpensive to administer. However, cost recovery principles should not be sacrificed for the sake of an efficient plan. Accordingly, the Commission should strike a fair balance with all principles outlined by NARUC. The FNPRM questions whether it is preferable for the Commission to adopt a single proposal in its entirety rather than a modified version of a proposal.³

The NPSC recommends the Commission adopt all or a substantial portion of NARUC's principles as a first step and then match other more specific plans submitted by the interested parties to the NARUC principles.

C. The Mechanism should employ common sense pricing principles based on the marketplace.

The NPSC agrees with the NARUC principle which separates price-regulated noncompetitive markets and competitive markets. The Commission can and should allow the market to dictate rates in competitive markets and permit state commissions to continue oversight determining reasonable rates of return, in noncompetitive markets.

D. The Compensation Mechanism should preserve state roles

The NPSC also agrees with the NARUC principle that appropriate federal/state balance must be struck. State commissions should continue their role where applicable in setting rates and protecting consumers. State commissions should continue their ability to supplement federal support and

³ FNPRM, ¶ 62

determine the state's needs with their own state universal service mechanisms.

E. The Mechanism should ensure the continuity of existing universal service and consumer protection mechanisms.

Critically important to states with large rural areas is the sustainability of universal service mechanisms. The NPSC urges the Commission to ensure the continuity of existing state universal service mechanisms. Very conceivably, the chosen compensation plan will put more pressure on universal service. State universal service mechanisms serve to keep rates affordable and reasonably comparable. State universal service mechanisms also encourage the deployment of new services and technologies which would otherwise not be offered in rural areas.

F. The resulting Mechanism should be resilient and adaptable to changing environments.

The compensation plan should not be technology specific, rather, rates should be unified and be tailored to compensate carriers no matter what application or technology is used. The NPSC agrees with the principle that NARUC released which included a broad base of "covered entities" which should be subject to any compensation regime. The NPSC further agrees with the statements of ARIC that the compensation regime should be extended to Voice over the Internet Providers (VoIP) as they benefit from

connecting to a ubiquitous network.⁴

G. The Commission should ensure a proper role for the Joint Board

Once a plan is adopted, the Commission should refer the plan to the Joint Board so that it can resolve many of the implementation issues. The Joint Board is an appropriate body to assist the Commission in easing the transition from the past to the future intercarrier compensation regime. The Commission should rely on the Joint Board's ability to work on an implementation plan consistent with the Commission's direction. Reliance on the Joint Board is consistent with the statutory direction in the Telecommunications Act of 1996. Further, reliance on the Joint Board will help ensure that federal and state interests are well balanced.

III. Implementation Issues

The Commission questioned whether, in order to craft a unified intercarrier compensation regime, there should be one mechanism by which rates are implemented. For nonrural carriers, the best approach is to require that the rate be negotiated by carriers and filed in agreement for approval. The negotiation process should be required to the extent practical for the carriers. However, the Commission must balance the goal of uniformity with the goal for efficiency. Practically speaking, it may be inefficient to require many of the rural carriers who have participated in the NECA pool to now negotiate agreements with each and every carrier accessing its network. Accordingly, where appropriate, the NPSC supports the idea of developing

⁴ FNPRM, ¶ 48.

default compensation rates or a mechanism which would permit rural carriers participating in the NECA pool to continue using pooling mechanism similar to that offered by NECA. This will cut costs for rural carriers and provide a more efficient mechanism in these circumstances for the exchange of traffic.

IV. Conclusion

We have been actively participating in the work of the NARUC ICTF and strongly support the process used to examine the difficult issues associated with intercarrier compensation and the necessary associated reform of universal service. While at this point we reserve our complete support of Version 7 it was developed using an appropriate collaborative process which should continue regardless of the plan selected by the FCC for further refinement. We believe this effort demonstrates the value of state regulators participating in formulating telecommunications policy.

Dated: May 23, 2005

Respectfully Submitted,

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